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H.B. 6661 -- Summary process use and occupancy payments

Recommended Committee action: REJECTION OF THE BILL

The housing court system has a long-established record of handling eviction cases in a way that is both fast and fair. H.B. 6661 attempts to change that system by allowing the landlord to prevent the tenant from presenting a defense without first paying a month's rent into court. Not only will this bog the court down in unnecessary hearings and payment collections (and thereby undercut its record of speedy dispositions) but it will deny tenants the fundamental constitutional right to be heard on their defenses without regard to their financial circumstances. In addition, by defaulting tenants for failure to pay, it will also prevent those cases from reaching the court's housing specialists for mediation. The combination of these latter consequences -- inability to present a defense and inability to participate in mediation -- will not merely undercut but will destroy the housing courts' ability to be fair; and in the end it will hurt landlords as well as tenants. There is no need to change the existing system, and this bill should be rejected.

- Defendants have a right to defend without regard to ability to pay. H.B. 6661 raises serious questions of due process, right of access to the courts, and discrimination based on indigency.

- The existing system is fast. Based on Judicial Branch data, the median time in eviction cases from "return day" (when the case officially starts in court) until entry of final judgment is 18 days; and more than 94% of eviction cases go to judgment within 60 days.

- The existing system is fair to both landlord and tenant. All evictions go through mediation, and the on-staff housing mediators settle nearly 95% of cases, usually with legally enforceable stipulated judgments agreed to by both landlord and tenant. If a judgment gives a tenant significant extra time to move, it usually includes a payment requirement that is enforceable by prompt eviction.

- The existing system draws tenants into the system so that agreements can be reached. The default rate is less than 40%, which is a very low default rate compared with the rest of the judicial system. H.B. 6661, in the guise of demanding payments, is really an effort to force tenants to default.

- The existing system already allows a landlord to require the tenant to pay into court in a way that is constitutional. Such orders (other than as part of a stipulated judgment) are used sparingly, however, because a mediation agreement is usually reached so quickly.

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- H.B. 6661 will be seriously counterproductive. H.B. 6661 will result in large numbers of use and occupancy hearings which will divert both judge and staff time from processing the actual eviction cases, which will inevitably move slower. This is a sensitive matter both because the Judicial Branch is short of judges and because most staff vacancies have not been replaced in recent years. H.B. 6661 will also result in large numbers of default judgments, which will require the more frequent use of marshals to carry out actual evictions, which are expensive for landlords. Although an agreed-upon stipulated judgment does not guarantee that the tenant will move out as scheduled, tenants are much more likely to vacate by a particular date when they have agreed to do so by stipulated judgment than when judgment is by default and the tenant has never been part of the discussion.

We strongly urge you to reject H.B. 6661.

Prepared by Raphael L. Podolsky
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